IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 282 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALABHAI SAMBHUBHAI SOLANKI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR PJ KANABAR for Appellant(s) : 1,
MR HL JANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.The present appeal has been filed by the

appellant-original accused of Sessions Case No.32 of 1996 being aggrieved and dissatisfied with the judgment and order dated 12-2-1999 passed by the learned Addl. Sessions Judge, Surat, in Sessions Case No.32 of 1996 whereby he was convicted for the offence under Sec.302 of IPC to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a further period of six months.

2. The short facts of the prosecution case are that on 17-1-1996 at about 15.30 hours Jaysukh Vaghasia was coming from his agricultural field on a bicycle and when he reached near the field of Pragjibhai Mohanbhai, he saw a scuffle between the appellant accused and deceased Maganbhai Mohanbhai Vaghasia. On seeing this, he threw his bicycle and ran towards the place of incident. When he entered the agricultural field, he saw at a distance of about 30 feet that the appellant accused was giving knife blow on the chest of the deceased and immediately tried to run away from the scene of offence. Due to severe injuries and profuse bleeding, deceased was not in a position to stand and, therefore, Jaysukh tried to control the victim but he could not. In the meanwhile, the deceased succumbed to

the injuries sustained. He therefore went to the Village and informed the same to his distant uncle Dahyabhai Rudabhai Vaghasia, who was sitting at the entrance of the Village and narrated the incident in detail. Dayhabhai Rudabhai then went to Dhari Police Station and lodged the complaint. Said complaint was taken down by PSI, Dhari Police Station and handed over to PSO for registration. The said complaint was registered as Dhari Police Station I.C.R.No.5 of 1996 for the offence punishable under Sec.302 of IPC and also under Sec.135 of BP Act. PSO along with the FIR and yadi handed over the investigation to PSI, Mr.Rabari, who kept yadi and copy of FIR with investigation papers and went to the sim of Devla Village in the field of Pragjibhai where he called the panchas, prepared inquest panchnama in presence of panchas and also prepared the panchnama of scene of offence and seized the muddamal. He also recorded the statements of various witnesses and made a search for the accused. He also made arrangements to send the dead body of the deceased for performing the post mortem to Dhari Community Health Centre along with yadi, marnotar form, etc. He also made a search for the accused and arrested the accused on 18th January, 1996 by preparing

arrest panchnama. He also seized the clothes worn by the accused at the time of incident under a panchnama and thereafter as accused expressed willingness to show the muddamal used in the commission of offence, he called two panchas to the Police Station and prepared primary panchnama to that effect there itself. Thereafter, he along with the police personnel and panchas proceeded to the place of incident in the Government jeep as directed by the accused and ultimately the accused took all the persons to the place where he hid the muddamal knife. He took out the knife from there and handed it over to the police and thereafter, second part of panchnama was prepared there itself by attaching the knife as muddamal. Meanwhile, as the Police Constable produced the clothes of the deceased worn at the time of incident which was given to him by the Medical Officer, same was also attached as muddamal by preparing panchnama. He also recorded statements of other witnesses and also made arrangements to send the muddamal to FSL. He also collected death certificate and post mortem report from the Medical Officer, Dhari Community Health Centre and on receipt of FSL report, they were kept with the investigation papers. At the end of investigation, he submitted the charge sheet against the

accused into Court of concerned learned Judicial Magistrate (First Class), Dhari.

3. As the offence alleged against the accused was exclusively triable by the Court of Sessions, learned Judicial Magistrate (First Class), Dhari, committed the case to the Court of Sessions at Amreli where it was numbered as Sessions Case No.32 of 1996 and handed over to the learned Addl. Sessions Judge for disposing of the same on merits.

4. On production of the accused, learned Addl. Sessions Judge, Amreli, framed charge against the accused. The accused pleaded not guilty to the charge and prayed for trial.

5. To prove the charge against the accused, prosecution examined 10 witnesses in all. The prosecution also produced and proved various documentary evidence.

6. It is required to be noted that out of 10 witnesses examined by the prosecution, following are the material witnesses:

   1) P.W.1, Dahyabhai Rudabhai Vaghasia, Ex.15, who is the complainant and at the earliest the eye witness Jaysukh narrated the details of the incident along with the act played by the accused with name etc. to this witness.

   2)P.W.2, Jaysukhbhai Kalubhai Vaghasia, Ex.23, who is the solitary eye witness to the incident.

7. In order to prove the incident which occurred

prior to the incident in question, prosecution placed reliance upon the evidence of P.W.9, Sudhirbhai Maganbhai Vaghasia, Ex.40, who is the son of the deceased. He also narrated the first incident and further deposed before the Court that because of the first incident, his father went to see the appellant accused in the field of Pragjibhai for giving him proper warning(thapco). However, scuffle took place when the accused is alleged to have given knife blow on the vital part of the body of the deceased i.e. chest which resulted into the offence under Sec.302 IPC.

8. For proving the aspect of homicidal death, the prosecution examined Dr.Rameshkumar Mansukhlal Sodha as P.W.3 at Ex.26, who was a Medical Officer in Dhari Community Health Centre and who performed post mortem on the dead body of the deceased on 18-1-1996 between 7.45 a.m. and 8.45 a.m. Through him, prosecution proved post mortem note Ex.27.

9. For proving the discovery panchnama, prosecution examined P.W.8, Babubhai Naranbhai Bhesaniya at Ex.38, who is the panch of panchnama of scene of offence Ex.37. Through him, prosecution proved the discovery panchnama Ex.37.

10. The prosecution also produced and placed reliance upon the FSL report Ex.22 to

establish that the blood stains found on the knife and clothes of the appellant accused was of the deceased.

11. On submission of closing pursis by the prosecution, learned Addl. Sessions Judge recorded further statement of the accused under Sec.313 of Cr.P.C. and asked incriminating question to the accused. Upon affording opportunity of hearing to the learned advocates appearing for the respective parties, learned Addl. Sessions Judge, Amreli, delivered the impugned judgment whereby the appellant-original accused was convicted to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default, to suffer further RI for six months for the offence under Sec.302 of IPC which gave rise to the present appeal.

12. Heard learned counsel, Mr.P.J.Kanabar for the appellant and Mr.H.L.Jani, learned A.P.P. for respondent-State.

13. Mr.Kanabar, learned counsel for the appellant, has mainly concentrated his argument on the oral evidence of Jaysukhbhai Kalubhai Vaghasia, P.W.2, Ex.23 as well as of Dahyabhai Rudabhai Vaghasia, P.W.1, Ex.15 and contended that both the witnesses are interested witnesses as they are relatives of the deceased and, therefore, their evidence is required to be discarded as their presence

at the time of incident is doubtful. Except these two evidence of witnesses, there is no other evidence to connect the accused with the crime in question and, hence, it is prayed that benefit of doubt is required to be given to the accused.

14. It is also contended after showing the medical evidence that it is a case of single blow and, therefore, it cannot be said to be an offence under Sec.302 of IPC as intention of the accused to kill the deceased was not there. It is also contended that the panchas namely, Danjibhai Batukbhai Koli, P.W.7 Ex.35 and Babubhai Naranbhai Bhesaniya, P.W.8, Ex.38 have not supported the case of the prosecution. One of the panchas has not fully supported the case regarding discovery panchnama and hence, Court ought not to have believed it as a discovery panchnama in the eye of law. He has relied upon para 2 of the judgment reported in 2000(1) SCC page 225 in the case of C.K.Raveendran Vs. State of Kerala.

15. Learned APP, Mr.Jani has also placed reliance upon the evidence of witnesses relied on by the learned counsel for the appellant. He has contended that since the impugned judgment is well reasoned, it does not require any interference.

16. We have gone through the oral as well as

documentary evidence shown to us by the learned counsel for the respective parties together with the reasoned judgment delivered by the court below.

17. For the purpose of deciding this appeal, following witnesses are important witnesses. The first witness is Jaysukhbhai Kalubhai Vaghasia, who has been examined as P.W.2 at Ex.23. He is the prime and solitary eye witness to the incident. His evidence is supported by the evidence of P.W.1, Dahyabhai Rudabhai Vaghasia, Ex.15, who is the complainant in the case. This is substantiated by the discovery panchnama Ex.37 which is proved by the prosecution by way of oral evidence of P.W.7, Danjibhai Batukbhai Koli as well as of P.W.8, Babubhai Naranbhai Bhesaniya. Apart from the above, scientific evidence also supports the case of the prosecution.

18. For the purpose of deciding the aspect of homicidal death, prosecution has placed reliance upon the oral evidence of P.W.3, Dr.Rameshkumar Mansukhlal Sodha Ex.26, who was discharging his duty as a Medical Officer at Dhari Community Health Centre at the relevant time. He has proved the external as well as internal marks of injuries found on the body of the deceased as also the post mortem note at Ex.27. He has categorically

deposed that injuries sustained by the deceased are anti-mortem and could be possible by way of muddamal knife and those injuries are sufficient to cause death of the deceased in the ordinary course of nature. He has also identified the clothes of the deceased as well as the knife in the Court.

19. It is required to be noted that the witness Jaysukhbhi Kalubhai Vaghasia is the solitary eye witness. Therefore, his evidence is required to be scrutinized with due care and caution and if his evidence is found to be reliable and free from doubt, then only, his evidence can be relied upon for basing conviction.

20. Keeping in the mind the above aspects, we have gone through the evidence of Jaysukhbhai Kalubhai Vaghasia, P.W.2, Ex.23. He has categorically deposed that his father is having agricultural (piyath vadi) in the sim of Devla Village and he is doing diamond cutting work at Dhari. On the date of incident, as it was a half-day holiday, he came back to Devla and went to the agricultural field and was returning on his bicycle. When he reached very near to the field of Pragjibhai Mohanbhai, a scuffle was going on between the appellant accused and deceased Maganlal and, therefore, he threw his cycle and went to the field of

Pragjibhai. At that time, he saw at a distance of 30 feet that the deceased was being beaten by the appellant accused and was inflicting blows with knife on the chest of the deceased and thereafter, he ran away from the scene of offence. Due to profuse bleeding, deceased was not in a position to stand and, therefore, he tried to control him but he could not and therefore, he went to the Village and told Dahyabhai about the incident along with name and role played by the accused. He was thoroughly cross examined by the learned counsel into the court below and nothing contrary came adversely affecting his evidence. Some suggestions were made that he was not there at the relevant time and that he being a relative of the deceased came there as a chance witness for helping the victim. Except that, there are no incriminating thing which turtle his evidence.

21. From the aforesaid, it appears that there is no denial on the part of the otherside regarding his having the agricultural field very near to the field of Maganbhai, etc. It is also not denied by the otherside that Maganbhai died in the field of Pragjibhai. In the cross examination of Jaysukhbhai, it is established that field of Maganbhai and Pragjibhai is adjacent to each other. Merely

because he is a distant relative of the deceased, his evidence cannot be discarded when otherwise it is found to be reliable and believable since at the earliest within 2-5 minutes, he narrated the incident to Dahyabhai, who in turn went to Dhari Police Station and lodged FIR Ex.16 wherein also, detailed description of the incident has been narrated. Dahyabhai Rudabhai Vaghasia has been examined as P.W.1 at Ex.15. He has also supported the say of the prosecution including the fact of his narration in the FIR. When he was cross-examined, nothing contrary came out shaking his evidence.

22. It has come out from the evidence that the appellant accused is also a native of the same Village and the witnesses and the appellant are known to each other from very beginning. It is also established from the evidence that at the relevant time, the appellant accused was serving in the field of Pragjibhai. It is also established from the evidence of son of deceased namely, Sudhirbhai Maganbhai Vaghasia, P.W.9, Ex.40 that prior to the incident, in the morning, some incident took place regarding gracing of cattle and for that, some slaps have been given by the appellant to son of Maganbhai and Maganbhai went and told something to the accused which the accused did not like and

scuffle started there.

23. All the aforesaid things connect the accused with the crime in question along with motive. It may be noted that when the accused was arrested and his clothes were seized, there was blood mark found on the clothes as per the panchnama. Said clothes were sent to FSL and FSL people opined that it is of human blood of group 'AB'. Simultaneously, the knife was also recovered by way of discovery panchnama Ex.37 and when it was sent to FSL, it was also opined that it was of the human blood of the group 'AB'.

24. A contention has been raised by the learned counsel for the appellant that prosecution witnesses 7 and 8 are the panch witnesses of discovery panchnama. Of these two witnesses, one has not totally supported the case of the prosecution. As far as other witness is concerned, he has admitted in cross-examination that he could not stand as per the version in the panchnama and, therefore, it is submitted that benefit of doubt is required to be given to the accused.

25. We are aware that now-a-days, supporting the prosecution case by the witnesses is a rarity, the main reason being the time factor. As and when an incident takes place, people have got some grudge in mind against the accused but by passage of time, since the

accused as well as the witnesses are from the same Village, some pressure is being brought upon the witnesses for the reasons best known thereby the witnesses turn out to be hostile in Court and do not support the say of the prosecution.

26. However, in the present case, we have the independent evidence of Police Officer, P.W.10, Bhikhubhai Govindbhai Rabari, Ex.41. Law on this point is well settled that if prosecution gets support from the testimony of Police Officer, who is an independent witness and who came in picture as part of duty, his testimony is required to be respected. Apart from that, we have also the evidence of doctor and FSL reports substantiating the case of the prosecution.

27. Keeping in mind all the above aspects of the matter, it is difficult to believe the contention raised by the learned counsel for the appellant that there was no blood stain upon the clothes of the appellant or on the muddamal knife. It is not the case of the appellant that muddamal which has been sent to FSL was not intact or somebody has played some mischief with the same. Even FSL expert opinion also says that the muddamal which they received was in an intact condition. Along with the muddamal, panch slip etc. were also there and, therefore also, it is very

difficult to accept the contentions of the learned counsel for the appellant that blood stain was not found either on the clothes of the appellant or on the knife. Hence, we believe the say of the prosecution and state that there is a discovery panchnama which states that knife has been recovered at the instance of the accused and it was found to have human blood of 'AB' group. Moreover, the clothes worn by the appellant was also seized and when it was sent to FSL, it was opined that the blood stains found on the clothes of the appellant were of the human blood of 'AB' group. Therefore, case of the prosecution is substantiated by the scientific evidence also.

28. As far as infliction of single blow by the appellant to the deceased is concerned, it is required to be noted that every case involving single blow will not require to be converted into Part II of Section 304 of IPC. What is required to be kept in mind in this regard is Section 299 and its clauses as well as firstly, secondly, thirdly and fourthly exceptions carved out in Section 300 of IPC and whether the case of the applicant covers in those exceptions or not.

29. On an evaluation of the evidence on record in the background of aforesaid aspects, we are of the opinion that intention of the

accused is very clear that even during scuffle, he has taken out knife and gave knife blow which is a deadly weapon and gave blow with it on the vital part of the body of the deceased i.e. chest which punctured his lungs as a result of that, the victim succumbed to the injuries. Therefore, it cannot be said that there was no intention on the part of the accused in committing the murder. If the otherside would have come out with a defense that knife is an agricultural instrument and which generally agriculturists used to carry when they go to agricultural field, the case would have been different. In absence of the same, we believe that it is a clear cut case wherein deadly weapon knife was carried by the appellant accused and he gave blow with it on the vital part of the body of the deceased resulting into an offence Sec.302 of IPC. Therefore, we are unable to accept the arguments of the learned counsel for the appellant that case of the appellant falls under Section 304 Part II.

30. As far as reliance placed by the learned counsel for the appellant upon the judgment reported in (2000)1 SCC page 225 is concerned, we are of the view that facts of that case and the facts before us are quite different wherein higher forum has come to

the conclusion on the basis of evidence of prosecution witnesses 2 and 3 which was not earlier believed by the court below. Hence, we are of the view that the aforesaid reported judgment would not be applicable to the facts of this case.

31. From the entirety of the facts and circumstances narrated hereinabove, we are of the opinion that judgment and order of conviction and sentence passed by the court below is legal and proper and which do not warrant any interference by this Court in the present appeal. Hence, this appeal is required to be dismissed.

32. Thus, the appeal is dismissed.

(R.P.DHOLAKIA,J.)

(K.S.JHAVERI,J.)

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